

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

IRISTINE VINES
Respondent

Case No.: I-00-40473

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 29 Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-40473) served March 27, 2002, the Government charged Respondent Iristine Vines with a violation of 29 DCMR 325.2 for allegedly admitting a child without a complete health examination.¹ The Notice of Infraction alleged that the violation occurred on January 25, 2002 at 3465 Minnesota Avenue, S.E., and sought a fine of \$500.

On April 8, 2002, Respondent filed a plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension of the any fines. Respondent explained that, due to a change in the child’s guardianship, there was a delay in completing the child’s immunization and health records. Respondent stated that due to a lack

¹ 29 DCMR 325.2 provides: “No infant or child shall be admitted to a child development facility without having first obtained a complete health examination by a licensed physician. The results of the examination shall be submitted to the caregiver or director of the child development facility on a form approved by the Mayor.”

of cooperation from the child's family in obtaining all of his required immunizations, and concerns about her losing her license to operate a child development home in the District of Columbia, she terminated him from her child development home program as of April 4, 2002.

By order dated April 11, 2002, this administrative court permitted the Government to respond to Respondent's plea and request within fourteen (14) calendar days of the order's April 15, 2002 service date. No response has been received from the Government.

II. Findings of Fact

1. By her plea of Admit with Explanation, Respondent has admitted violating 29 DCMR 325.2 at 3465 Minnesota Avenue, S.E. on January 25, 2002.
2. On January 25, 2002, Respondent had admitted a child, identified herein as "T.K.," to her child development home program at 3465 Minnesota Avenue, S.E. without the child having had "a complete health examination by a licensed physician." 29 DCMR 325.2.
3. In November, 2000, T.K.'s maternal aunt became his guardian.
4. T.K. had not completed his immunizations prior to being enrolled in Respondent's daycare program on March 1, 2001.
5. In the Government's March 15, 2002 Statement of Deficiencies and Plan of Correction that was submitted to Respondent, the Government Inspector, Maureen Ryan, noted that Respondent's failure to have T.K.'s tuberculosis results constituted a "Repeat Violation."

6. Due to a perceived lack of cooperation from T.K.'s family in obtaining all of his required immunizations, and concerns about the possible loss of her license to operate a child development home in the District of Columbia, Respondent terminated T.K. from her daycare program as of April 4, 2002.
7. Respondent has requested a reduction or suspension of the authorized fine for her admitted violation. The Government has elected not to respond to Respondent's request.

III. Conclusions of Law

1. Respondent violated 29 DCMR 325.2 on March 25, 2002. A fine of \$500 is authorized for a first offense of this regulation. 16 DCMR §§ 3201.1(b)(1) and 3222.1(l).
2. Respondent has requested a reduction or suspension of the authorized fine. Under the facts of this case, I conclude that neither a reduction nor a suspension of the authorized fine is appropriate. For over a year, Respondent, in direct contravention of the requirements of § 325.2, permitted T.K. to interact with other children in her child development home despite his not having had a complete health examination. In so doing, Respondent not only jeopardized T.K.'s health, but she jeopardized the health of the other children enrolled in the daycare program.²

² For example, a completed health examination for T.K. might have revealed that he had a condition that required specialized care not available from Respondent or, alternatively, that he somehow posed

3. Strict compliance with the requirements of § 325.2 is critical to maintaining the health and welfare of our children, as well as maintaining public confidence in the District of Columbia's childcare system. As this administrative court discussed in *DOH v. Jewels of Ann Private School*, OAH No. 40204 at 11 (Final Order, January 29, 2001):

The reasons behind the requirement in 29 DCMR 325.2 are clear. A child care facility must be in a position to report quickly on the health conditions of the children in its care and to address them when appropriate. To do this, a childcare facility must obtain complete health examination forms for all children it admits. Without such forms, it operates in the dark with respect to the health needs of each child and it unreasonably places other children at risk of infectious diseases. The risk of infection is compounded by the fact that a childcare facility, by its nature, places children in close quarters for extended periods. *See, e.g., C. Hale and J. Polder, The ABC's of Safe and Healthy Childcare* Pg. 13-20 (U.S. Centers for Disease Control, 1996)

3. Respondent's explanation that a change in T.K's guardianship delayed the completion of his health records is unavailing. There is no evidence in the record to suggest that, because T.K. had a change in guardianship in November, 2000, Respondent was obligated to admit him in March, 2001 in contravention of the requirements of § 325.2 and, once admitted, was also obligated to allow him to remain in the daycare program until April, 2002. Under these facts, therefore, Respondent's failure to cure its admitted violation of § 325.2 is inexcusable and, as such, no reduction or suspension of the authorized fine is appropriate. *Accord Jewels of Ann Private School*, OAH No. 40204 at 11 (holding respondents' failure

a heightened health risk to the other children in Respondent's child development home. Complying with the requirements of § 325.2 obviates the need for such speculation.

to cure violation of § 325.2 after nearly three months was “inexcusable” and no reduction of the authorized fine was warranted).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the total amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent’s licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent’s business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/17/02**

Mark D. Poindexter
Administrative Judge